

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago & St. Louis Railroad that:

1. The Carrier violated the provisions of the agreement when on November 17, 1949, it declared abolished the operator-levermen positions at "DA" Tower, Arcadia, Ohio, without in fact discontinuing the work of the positions and transferred some such work to employes on a separate seniority district and some parts of the work to employes holding no seniority under the agreement.

2. The work formerly performed by the operator-levermen on the Fort Wayne Division at "DA" Tower shall be restored to the employes on the Fort Wayne Division who are covered by the Telegraphers' Agreement.

3. The Carrier shall be required to compensate the senior idle employe, extra in preference, on the Fort Wayne Division on the basis of eight hours' pay for each shift of each day the violation continues, commencing with the date of the filing of this claim, October 4, 1952.

4. The Carrier be required to reimburse all other employes adversely affected for any loss in time or expense incurred account this violative action.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of June 1, 1948, is in effect between the parties to this dispute.

The line of the Carrier which is commonly known as the L. E. & W. District joins the main line, known as the Nickel Plate, at a point designated as "DA" Tower, Arcadia, Ohio. From "DA" Tower to Fostoria the L. E. & W. tracks and the Nickel Plate tracks run parallel and are used as double track operation. Beyond Fostoria, which is some five miles east of Arcadia, the

manning of Centralized Traffic Control machines presented a jurisdictional question. See Awards 641, 4768, 5374, 6224, and others. But the question of manning Centralized Traffic Control machines can not be present in this case. It was not raised in the handling on the property. It has never been raised in connection with the operation of 692 miles of Centralized Traffic Control which has been placed in service during the past 20 years, the progress of which is shown on Carrier's Exhibit "A". By practice and agreement on this Carrier it is well settled that such machines are properly manned by train dispatchers when such machines are located at points where train dispatchers are employed. That situation obtains in the instant case and there was no violation of agreement in closing DA Tower when Centralized Traffic Control was extended to cover this territory and controlled from and under the jurisdiction of the dispatcher at Ft. Wayne.

Although, as the Carrier has shown, the present claim is not the same claim handled on the property and has not been handled in the usual manner as required by the Railway Labor Act, nevertheless, all that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim arises out of the discontinuance of "DA" Tower at Arcadia, Ohio, and the consequent abolition of the operator-leverman positions at that location, effective November 17, 1949. This was brought about by the installation of Centralized Traffic Control between Arcadia and Lima, Ohio, and the elimination of the necessity of trains receiving train orders at "DA".

This Claim was originally filed on October 19, 1949, and was finally declined by the Carrier on March 8, 1950. A month later the General Chairman wrote the Carrier restating his position. From that time, April 9, 1950, to October 4, 1952 (a lapse of two and a half years), nothing further occurred and the claim was apparently abandoned. On the latter date a new claim was filed, or the old claim was refiled in a new form. The new or amended claim alleges the same violation as the original claim.

The claim as refiled was finally denied by the Carrier on February 25, 1953. Notice of intent to progress the claim to this Board was given on September 24, 1954, nineteen months later. There have thus been two separate periods of delay and inaction in the long progress of this claim, one of two and a half years and the second of over a year and a half. During each of the periods the Carrier was permitted to assume that the claim was abandoned.

We are satisfied that this is a case clearly calling for application of the doctrine of laches established by many decisions of this Board. See among others Awards Nos. 4941, 6650, 4346, 5949, 6996, 7074, 7135. It is unnecessary to repeat here, or to quote, the sound reasons stated in those and other decisions for the rule as to unreasonable delay. That rule is not one primarily for the benefit of carriers—it is in the interest also of employees and it is in the public interest. We hold that when, following an earlier apparent abandonment of the claim, the Carrier again declined the claim on March 8, 1950, that decision became final when the Organization failed to process it to this Board within a reasonable time. In considering what would have constituted a reasonable time, we have taken into account the earlier extended delay and apparent abandonment of the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the Agreement for which the Carrier is chargeable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 10th day of January, 1958.